

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

ORDER DENYING DEFENDANT

AMMON BUNDY'S REQUEST

v.

RE: TRIAL ATTIRE

AMMON BUNDY and RYAN BUNDY,

Defendants.

BROWN, Judge.

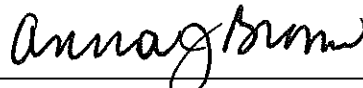
The Court **DENIES** Defendant Ammon Bundy's request contained in his Memorandum (#1201) re: Defendants' Trial Clothing, and in an email to the Court dated September 7, 2016, attached hereto as Exhibit 1, in which Ammon and Ryan Bundy request they be permitted to wear a belt, tie, and boots contrary to the policy of the United States Marshals Service (USMS). Ammon and Ryan Bundy appeared dressed neatly and in civilian attire and were not dressed in any way that would alert the jury to their custody status or in clothes that were identifiable as prison-issued attire. See *United States v. Rogers*, 769 F.2d 1418, 1423 (9th Cir. 1985) ("An accused has no constitutional right to appear before a jury in civilian clothes," but, on the other hand, "[a]n

accused may not be compelled . . . to appear before a jury in identifiable prison clothes." ). Moreover, as demonstrated in the photographs of the attire worn by Defendant Ammon Bundy and Ryan Bundy, which are attached hereto as Exhibit 2, their attire does not negate in any way their constitutional presumption of innocence.

Finally, the Court finds the USMS policy prohibiting in-custody defendants from wearing neck ties and belts for safety purposes, and prohibiting boots in order to facilitate the use of shackles during transportation of in-custody defendants to and from the courtroom is rational and furthers USMS's responsibilities to transport in-custody Defendants and to provide courtroom security.

IT IS SO ORDERED.

DATED this 9th day of September, 2016.



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ANNA J. BROWN  
United States District Judge

From: "Marcus R. Mumford"  
 Date: 09/08/2016 07:37 AM  
 Subject: Re: Instruction to Mr. Medenbach not to wear the shirt he wore to Court today.

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Your Honor,

On behalf of Ammon Bundy, we appreciate the authority of the Court on this issue, and the reasoning behind it, especially where the Court demonstrates its appreciation for how one's clothing can be an important part of their overall speech and expression.

That was the basis of our request on Mr. Bundy's behalf earlier today, where we raised, essentially, two issues:

1. That the Court ameliorate the fact that the parties and jurors arriving today were greeted with a visible and increased police presence at the Courthouse, including, by our count, at least five additional officers, stationed at the main entrance and immediately outside the courtroom where the potential jurors and parties get off the elevators, dressed in SWAT-like attire, with the bright yellow message emblazoned on their uniforms: "**POLICE - HOMELAND SECURITY.**" As we arrived, we were also subjected to increased security measures, as we were forced to remove belts and shoes, which had not previously been an issue, as the marshals, for example, had expressed their appreciation on prior occasions for my "Sunday, go-to-meeting" boots as I walked through the metal detector without incident. As we stepped off the elevator, we observed, with other milling around, another officer identified with the same "**HOMELAND SECURITY**" garb exiting the courtroom with a police dog.

Please do not mistake the issue I attempted to raise in that respect. It is not the increased police presence, or increased security measures per se. We completely understand and, frankly, greatly appreciate, the Court's and others' interest in our safety and the safety and protection of everyone associated with this trial. We are not asking for the court to compromise the safety of anyone. (As an aside, we do understand that the prosecution team is not subject to the same level of search as they enter the courthouse, which seems to unfairly single out defense lawyers.)

But it has become very clear to me that, to the extent these measures are attributable or related in any way to my client or his continued status as detained and incarcerated, they are misbegotten and prejudicial. And when combined with the messaging "**HOMELAND SECURITY,**" it seems that they are designed to further advance and communicate the erroneous conclusion that Mr. Bundy presents a "danger" to the community – and thus should be tried and punished in a manner befitting that conclusion.

First, I note again that the Court and government only reached their conclusion in that respect by mischaracterizing Mr. Bundy's actions as if they demonstrated an unjustified "resistance to lawful authority." At the July 18 hearing, we showed how the government completely misrepresented Mr. Bundy's actions, as if he had disobeyed several government orders during the occupation at the Refuge. (See 7/18/2016 Hrg. 9:20-10:18, 17:25-31:15)

Our position on this issue is influenced by the significance of the words "**HOMELAND SECURITY.**" We believe those words are inseparably connected with 9/11, and, therefore, when combined with the SWAT-like garb worn by some of the officers today, cannot help but associate Mr. Bundy and the issues presented in this trial with the terrorist actions of individuals who proved themselves to be America's true enemies. That is the expressive conduct we asked the Court to address. (On this point, I would admit that perhaps my personal experiences have unduly affected my views associating "**HOMELAND SECURITY**" with 9/11. I was living in New York at the time, watching from my office on the 45th floor of another skyscraper as the towers fell, spending the next several hours concerned for the safety of my fiancé, who, as it turns out, had been covered in the dust billowing down the corridors of Wall Street.)

I would note that the U.S. Marshals at the entrance, and in the courtroom, appear to have implemented policies to address these matters in how they appear and present themselves: providing security for all parties without the same kind of military-like tactical garb and associated messaging. We presume that it is this concern for messaging that underlies the Trial Conduct Order that the Court referenced in the email below.

2. Relatedly, we asked the Court for small accommodations to allow Mr. Bundy to present himself at trial in clothes that would include his belt and non-steel toe boots. As the Court knows, we view this matter as one of authenticity and credibility, as Mr. Bundy is to be judged on such matters by a jury of his peers. I will not re-address the arguments previously presented on this issue, except to note how many of the potential jurors today admitted their exposure to pre-trial publicity and widespread criticism of Mr. Bundy's actions underlying the government's prosecution, revealing the headwinds Mr. Bundy faces in the upcoming trial. We ask that the Court help us in eliminating some of those potentially prejudicial headwinds and allow Mr. Bundy to present himself as he would desire – though obviously in accordance with the same Trial Conduct Order referenced in the Court's ruling regarding Mr. Mendenbach.

This email response became a bit longer than I originally anticipated, but I would ask that the Court reconsider these matters in light of its ruling regarding Mr. Mendenbach's shirt.

-Marcus Mumford  
 Attorney for Ammon Bundy

